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FILED 10 MAY 17 16:20 USDC-ORP

Attorneys for Defendant Del Monte Fresh Produce N.A., Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

LUIS RIOFRIO,

Plaintiff,

v.

DEL MONTE FRESH PRODUCE N.A.,  
INC., a foreign corporation,

Defendant.

CV '10 - 562 HA  
Case No. \_\_\_\_\_

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441  
DIVERSITY JURISDICTION

COMES NOW defendant Del Monte Fresh Produce N.A., Inc. (hereinafter referred to as "Del Monte"), by and through its counsel of record, Farleigh Wada Witt, and pursuant to 28 U.S.C. § 1446, hereby provides notice of removal as follows:

1. This case is a civil action over which this court has original jurisdiction pursuant to 28 U.S.C. § 1332 and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441. Venue in this Court is proper pursuant to 28 U.S.C. § 1446(a) because the Circuit Court of the State of Oregon for the County of Multnomah is located within the District of this Court.

2. On or about April 15, 2010, Plaintiff commenced an action against Del

Monte in the Circuit Court of the State of Oregon for the County of Multnomah as Case No. 1004-05577.

3. At the time of the commencement of said action in state court and at the time of filing this removal petition, plaintiff was a natural person residing in the State of Washington. At the time of the commencement of said action in state court and at the time of filing this removal petition, defendant was a corporation existing under the laws of the State of Florida with its principal place of business in Coral Gables, Florida.

4. Del Monte was served with the summons and complaint in this matter on May 3, 2010. A true copy of the summons and complaint are attached hereto as Exhibit 1. Plaintiff seeks money damages in the sum of \$501,933.77.

5. This Notice of Removal is being filed within thirty (30) days of Del Monte being served with the summons and complaint.

6. Accompanying this Notice of Removal as Exhibit 2 is a copy of the Notice of Filing Notice of Removal (without exhibits), to be filed in Circuit Court of the State of Oregon for the County of Multnomah promptly after filing this Notice of Removal.

7. This is a controversy for which the United States District Court has original jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332 because plaintiff and defendant are citizens of different states and the amount in controversy exceeds \$75,000.

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WHEREFORE, Del Monte respectfully requests that this Court assume full jurisdiction over this action, as provided by law.

DATED this 17<sup>th</sup> day of May, 2010.

FARLEIGH WADA WITT

By:   
\_\_\_\_\_  
Brad C. Stanford, OSB #854119  
[bstanford@fwwlaw.com](mailto:bstanford@fwwlaw.com)  
Kimberley Hanks McGair, OSB 984205  
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(503) 228-6044  
Attorneys for Defendant Del Monte Fresh  
Produce N.A., Inc.

12:47

**In the Circuit Court of the State of Oregon**

For the County of Multnomah

LUIS RIOFRIO,

Plaintiff,

No. 1004-05577

v.

SUMMONS

DEL MONTE FRESH PRODUCE N.A., INC., a foreign  
corporation,

Defendant.

To: Del Monte Fresh Produce N.A., Inc. Through their agent CT Corporation System, 388 State St, Ste. 420, Salem, Oregon 97301

*You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.*

**NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon (800) 452-7636.

  
JUDY DANELLE SNYDER

# 732834

JUDY DANELLE SNYDER

Trial Attorney

# 732834

STATE OF OREGON: )  
County of Multnomah )

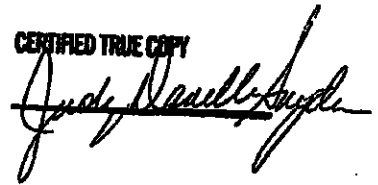
*I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.*

  
Attorney of Record for Plaintiff(s)

**TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:** *You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service upon a separate document which you shall attach hereto.*

LAW OFFICES OF JUDY SNYDER  
1000 SW Broadway, Suite 2400  
Portland, Oregon 97205  
Tel: (503) 228-5027  
Attorneys for Plaintiff

CERTIFIED TRUE COPY



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

**1004-05577**

LUIS RIOFRIO,

Plaintiff,

v.

DEL MONTE FRESH PRODUCE N.A., INC., a  
foreign corporation,

Defendant.

Case No.

COMPLAINT (Discrimination in violation  
of ORS 659A.199; Unlawful Deduction in  
Violation of 652.610; and Wrongful  
Discharge)

NOT SUBJECT TO MANDATORY  
ARBITRATION

DEMAND FOR JURY TRIAL

Plaintiff alleges:

1.

Plaintiff Luis Riofrio, ("plaintiff"), is a resident of Washington.

2.

Defendant Del Monte Fresh Produce N.A., Inc. ("defendant") is a Florida corporation, which  
is registered in Oregon and which conducts regular and ongoing business activities in Multnomah  
County, Oregon.

3.

Plaintiff worked for defendant as a Quality Assurance Manager from August 2008 until his  
termination on April 17, 2009. At all material times, plaintiff worked at defendant's Portland, Oregon  
plant.

PAGE 1 - COMPLAINT

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PORTLAND, OREGON 97205  
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FAX (503) 241-2249

EXHIBIT 1  
Page 2 of 6

1 4.

2 Shortly after he began working for defendant, plaintiff observed employees donning sanitary  
3 and protective gear before clocking in and entering the production area. Plaintiff complained about  
4 this practice to operations manager, Santos Coria Sanchez, general manager Warren Wojliski  
5 ("Wojliski"), and regional quality assurance manager, Martha Siegel, as this practice was unsanitary  
6 and possibly violated health and safety regulations.

7 5.

8 In December of 2008, plaintiff requested and authorized the destruction of grapes received  
9 from California that were decayed and contained fungus. The operations department failed to  
10 dispose of the rotten produce. The operations crew members were instructed by managers to sort  
11 through the grapes and use the grapes that looked fine in fruit bowls being produced for a  
12 customer.

13 6.

14 Plaintiff was later called into Wojliski's office and told that using the grapes was a good  
15 opportunity for defendant to make money. Plaintiff disagreed with the decision to use the grapes.

16 7.

17 In early March 2009, plaintiff met with Wojliski and Sanchez and raised his concerns about  
18 the poor quality of food that was being processed in the plant.

19 8.

20 On or about March 5, 2009, plaintiff learned that the on-site staffing receptionist was making  
21 false statements that plaintiff had sexually harassed her. Plaintiff reported this information to the  
22 human resources manager, and asked that an investigation be conducted into the false complaint.

23 9.

24 Shortly thereafter, the receptionist for the Portland plant falsely accused plaintiff of sexually  
25 harassing her. Plaintiff was interviewed by Laura Medina, HR Corporate Manager, as part of the  
26 investigation into the complaint and denied sexually harassing the receptionist in any manner.

PAGE 2 - COMPLAINT

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EXHIBIT 1  
Page 3 of 6

10.

On April 10, 2009, plaintiff provided a memorandum to Wojiski regarding his concerns over the use and handling of decomposed chicken for salad kits. Plaintiff indicated his intent to discuss his food quality concerns with Ross McKinney, Quality Assurance Corporate Director.

11.

On April 14, 2009, plaintiff received a final written warning for allegedly failing to submit a pre-audit report and failing to submit a report of corrective actions. On April 14, 2009, plaintiff provided a written response, denying any wrongdoing.

12.

On April 17, 2009, plaintiff was terminated for allegedly violating defendant's company policies regarding harassment.

**FIRST CLAIM FOR RELIEF**

**ORS 659A.199 - Retaliation**

13.

Plaintiff realleges in incorporates paragraphs 1 through 12 above.

14.

During his employment, plaintiff in good faith made complaints or reports of information he believed to be violations of state and federal law regarding food safety.

15.

Defendant terminated plaintiff's employment in retaliation for plaintiff's good faith reports and complaints, in violation of ORS 659A.199.

16.

As a direct and proximate result of defendant's wrongful conduct, plaintiff has suffered economic damages and is entitled to an award of his lost wages and benefits, plus prejudgment interest from the date of termination until trial.

PAGE 3 - COMPLAINT

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EXHIBIT 1  
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1 17.

2 As a further direct and proximate result of defendant's wrongful conduct, plaintiff has been  
3 subjected to pain, suffering and humiliation, entitling him to an award of compensatory damages.

4 18.

5 Plaintiff is further entitled to reasonable attorneys fees and costs, pursuant to ORS  
6 659A.885.

7 **SECOND CLAIM FOR RELIEF**

8 **ORS 652.610 - Unlawful Deduction**

9 19.

10 Plaintiff realleges and incorporates paragraphs 1 through 12 above.

11 20.

12 Defendant deducted \$1,933.77 from plaintiff's final paycheck, which plaintiff did not  
13 authorize or to which plaintiff did not agree. Defendant's conduct violated of ORS 652.610.

14 21.

15 As a direct and proximate result, plaintiff is owed damages in the amount of \$1,933.77.

16 22.

17 Pursuant to ORS 652.615, plaintiff is entitled to seek attorneys fees and costs.

18 **THIRD CLAIM FOR RELIEF**

19 **WRONGFUL DISCHARGE**

20 23.

21 Plaintiff realleges and incorporates paragraphs 1 through 12 above.

22 24.

23 Defendant wrongfully terminated plaintiff's employment because plaintiff was exercising an  
24 important right related to his employment - complaining about defendant's violation of federal and  
25 state food safety laws. Plaintiff was further terminated for fulfilling an important societal obligation  
26 of challenging defendant's food handling practices which posed a significant health and safety risk

PAGE 4 - COMPLAINT

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1 for the public.

2 25.

3 As a direct and proximate result of defendant's conduct, plaintiff has suffered economic  
4 damages and is entitled to an award of his lost wages and benefits, plus prejudgment interest from  
5 the date of termination until trial.

6 26.

7 As a further direct and proximate result of defendant's wrongful conduct, plaintiff has been  
8 subjected to pain, suffering and humiliation, entitling him to an award of compensatory damages.

9 27.

10 Plaintiff is further entitled to costs and disbursements.

11 **DEMAND FOR A JURY TRIAL**

12 28.

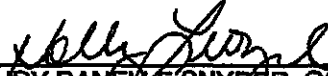
13 Plaintiff demands a jury trial.

14 WHEREFORE, plaintiff prays for judgment against the defendant, as follows:

- 15 1. Economic damages for plaintiff's lost wages and benefits plus prejudgment interest  
16 from the date of termination until trial;  
17 2. Compensatory damages in the amount of \$500,000;  
18 3. Actual damages for unlawful deductions in the amount of \$1,933.77; and  
19 4. Plaintiff's costs, disbursements and attorney's fees incurred herein.

20 DATED this 14<sup>th</sup> day of April, 2010.

21 LAW OFFICES OF JUDY SNYDER

22   
23 JUDY DANELLE SNYDER, OSB No. 732834  
24 HOLLY LLOYD, OSB No. 942979  
25 Telephone: (503) 228-5027  
26 Facsimile: (503) 241-2249  
Email: [judy@jdsnyder.com](mailto:judy@jdsnyder.com)  
Of Attorneys for Plaintiff

Trial Attorney: Judy Danelle Snyder, OSB No. 732834

PAGE 5 - COMPLAINT

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EXHIBIT 1  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

LUIS RIOFRIO,

Plaintiff,

v.

DEL MONTE FRESH PRODUCE N.A., INC.,  
a foreign corporation,

Defendant.

Case No. 1004-05577

NOTICE OF FILING OF NOTICE OF  
REMOVAL

PLEASE TAKE NOTICE that on May 17, 2010, Defendant Del Monte Fresh Produce, N.A., Inc., filed a Notice of Removal in the United States District Court for the District of Oregon, at Portland, Oregon. A true and correct copy of the Notice of Removal, including all exhibits, is attached hereto as Exhibit 1.

DATED this 17<sup>th</sup> day of May, 2010.

FARLEIGH WADA WITT

By: /s/ Brad C. Stanford

Brad C. Stanford, OSB #854119

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Kimberley Hanks McGair #984209

[kmcgair@fwwlaw.com](mailto:kmcgair@fwwlaw.com)

(503) 228-6044

Attorneys for Defendant Del Monte Fresh  
Produce N.A., Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2010 I served the foregoing NOTICE OF FILING OF NOTICE OF REMOVAL on the following individual by mailing to said individual a true copy thereof, addressed to her last known regular address and deposited in the Post Office at Portland, Oregon:

Judy Snyder  
Attorney at Law  
1000 SW Broadway, Suite 2400  
Portland, OR 97205

Dated: May 17, 2010.

**FARLEIGH WADA WITT**

By: /s/ Brad C. Stanford  
Brad C. Stanford, OSB #854119  
[bstanford@fwwlaw.com](mailto:bstanford@fwwlaw.com)  
Kimberley Hanks McGair #984209  
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(503) 228-6044  
Attorneys for Defendant Del Monte Fresh  
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Judy Snyder  
Attorney at Law  
1000 SW Broadway, Suite 2400  
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Dated: May 17, 2010.

**FARLEIGH WADA WITT**

By: 

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